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DEPARTMENT OF INFRASTRUCTURE MANAGEMENT

Office of Planning
Agriculture Development Board

RESOLUTION OF THE
MIDDLESEX COUNTY AGRICULTURE DEVELOPMENT BOARD
REGARDING A RIGHT TO FARM DETERMINATION
FOR THE PROPERTY KNOWN AND DESIGNATED AS
LOTS 2.1 AND 2.3 IN BLOCK 32 IN THE TOWNSHIP OF MONROE

Charles Kenny
Chairperson,
Infrastructure Management

John A. Pulomena
County Administrator

Khalid Anjum
Department Head

Alan A. Danser, Chairman

James Giamarese
Vice Chairman

Thomas Mancuso, Secretary

Mirah Becker, PP, AICP
Supervising Planner

Laurie Sobel, PP, AICP
Senior Environmental Planner

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq., and State Agriculture Development Committee (SADC) regulations, N.J.A.C. 2:76-10(a), any person aggrieved by the operation of a commercial farm shall file a complaint with a County Agriculture Development Board (CADB) or with the SADC in counties where no CADB exists; and

WHEREAS, the Township of Monroe ("Monroe") filed an action in the Superior Court of Middlesex County entitled Township of Monroe v. Love's Tree Removal, Inc., et als. under Docket No. MID-C-46-17 wherein the Township of Monroe complained of certain operations on properties which were the subject of the complaint as more fully set forth in the complaint; and

WHEREAS, by Order of the Honorable Arnold L. Natali, Jr., P.J. Ch., entered on August 21, 2017, certain claims which were a part of the complaint were ordered transferred to the Middlesex County Agricultural Development Board ("MCADB") to address the following issues: 1) if the Defendants were operating "commercial farms" as contemplated by the Right to Farm Act (the "Act"), N.J.S.A. 4:1C-1 et. seq., and as defined in N.J.S.A. 4:1C-3 at their respective properties; and, 2) if the activities allegedly conducted by the Defendants at their respective properties as detailed in Plaintiff's Verified Complaint are permissible activities pursuant to N.J.S.A. 4:1C-9; and

WHEREAS, the MCADB determined to address the issues identified by the Court separately and provided notices to the defendants in the Superior Court action requesting them to submit a Commercial Farm Determination Application together with supporting documentation (the "Application"); and

WHEREAS, Smentkowski Brothers ("Smentkowski") submitted an Application to the MCADB seeking commercial farm determination for the property known and designated as Lots 2.1 and 2.3 in Block 32 on the Tax Map of the Township of Monroe (the "Smentkowski Property"); and

WHEREAS, at its November 29, 2017 MCADB meeting, the MCADB considered the Smentkowski Application based on all submitted documentation as well as the testimony provided by the applicant who was represented by counsel; and

WHEREAS, at its December 20, 2017 MCADB meeting, the MCADB memorialized its findings that based on the foregoing submissions, there was reasonable, sufficient and credible evidence to make a determination that the Smentkowski Property was a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-3; and

WHEREAS, by MCADB correspondence dated February 13, 2018, the Smentkowskis were provided with a Site Specific Agricultural Management (SSAMP) Application and were directed to submit the completed application and all requested information to the MCADB within thirty (30) days of receipt of the application in order to advance on to the next step of the Right to Farm process for a site specific management practice determination of the operation(s) in question on the Smentkowski Property to be made by the MCADB; and

WHEREAS, by MCADB counsel correspondence dated March 26, 2018, Smentkowskis counsel was notified that MCADB's determination that the Smentkowski Property is a "commercial farm" does not provide Right to Farm Protection for any specific activity on the Smentkowski Property and further advised that unless and until the MCADB receives and makes a determination on the second step of the Right to Farm process, an SSAMP determination about the activities on the farm, the Smentkowski Property does not have protection under the Right to Farm Act for those activities, and again requested submission of SSAMP Application; and

WHEREAS, to date, as of August 30, 2018, the MCADB has not received any information from either the Smentkowskis or their counsel in connection with the application for SSAMP on the Smentkowski Property; and



WHEREAS, this matter has been placed on the MCADB's agenda for September 12, 2018 to make a determination whether the activities conducted at the Smentkowski Property are permissible activities pursuant to N.J.S.A. 4:1C-9, as per the order of the Honorable Arnold L. Natali, Jr., P.J. Ch.;

NOW THEREFORE BE IT RESOLVED, that the MCADB hereby determines that since the SSAMP Application has not been completed and the requested information has not been submitted in order for the MCADB to make a determination on the merits and no contact has been made to the MCADB Staff for an extension, the MCADB cannot make a determination that the Smentkowski Property is operating in accordance with a SSAMP and is not currently eligible for Right to Farm protection; and

BE IT FURTHER RESOLVED that, based on the foregoing, MCADB cannot make a determination on the merits that the Smentkowski Property and the activity thereon is eligible for Right to Farm Protection pursuant to N.J.S.A. 4:1C-9; and

BE IT FURTHER RESOLVED that, because the MCADB cannot make a determination on the merits due to the applicant's failure to provide information, the matter is hereby dismissed by the MCADB without prejudice and the disputed activities alleged in the complaint shall remain under the jurisdiction of all other appropriate local, state and/or federal authorities; and

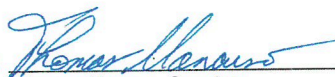
BE IT FURTHER RESOLVED, that the MCADB shall forward a copy of this resolution to the Smentkowski Brothers, Walter Toto, Esq., the Monroe Township Planning Board, the Monroe Township Municipal Court, the Superior Court of Middlesex County, the SADC and any other individuals deemed appropriate by the Board within 30 days of this recommendation; and

BE IT FURTHER RESOLVED that any person aggrieved by this Resolution may appeal to the SADC within 10 days of that person's receipt of this Resolution.

| <u>Recorded Vote:</u> | <u>Aye</u> 6 | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|-----------------------|--------------|-----------|----------------|---------------|
| Alan A. Danser | X | | | |
| James Giamarese | X | | | |
| Thomas Mancuso | X | | | |
| Robert Von Thun | X | | | |
| Rodger Jany | X | | | |
| Samuel Landy | X | | | |


Alan A. Danser, Chairman

I hereby certify the above is a true copy of a Resolution duly adopted by the Middlesex County Agriculture Development Board at a meeting held on September 12, 2018 at which a quorum was present and acting throughout.

Attest: 
Thomas Mancuso, Secretary

